

General Information Letter: Explanation of computation of income double-taxed by Utah and Illinois.

April 29, 2005

Dear:

Your letter to Sheri Hoff dated April 21, 2005, has been forwarded to me for response. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

In your letter you have stated the following:

Ms. Z received the enclosed ITR-76 dated April 18, 2005. It showed a change in the amount claimed as being double taxed in Utah. We disagree with this adjustment and the calculation method.

I called the Dept. of Revenue April 21, 2005 to explain our disagreement in the equivalency formula used to calculate the amount for column B on the Illinois Schedule CR. The agent I spoke to suggested I write you requesting you to review this formula.

Here are the taxpayers facts for 2004 and how each state taxes them.

Federal AGI consist of,		Taxable in Utah	Taxable in Illinois
Wages ¹	67,306	yes	yes
Interest	600	yes	yes
State refunds ²	1,459	no	no
Business income	610	yes	yes
Pensions	6,131	yes	no
Rental income	(8,133)	yes	yes
Unemployment	319	yes	yes
Taxable SSI	7,229	yes	no ³
Total Income	75,521		
SE tax adjustment	(43)		
Federal AGI	75,478		

Reported on the TC-40C (Non-Resident Utah) 32,085. This is 42.51% of the Federal AGI.

Utah does tax pensions and taxable SSI. The tax is calculated as if the taxpayer was a resident first then the tax is adjusted based on the percentage earned from Utah sources. In this taxpayers case that was the wages of 31,528 and the Utah refund for 2003 of 557.00. Since the state refund isn't taxable in either state we only reported the wages in the amount of 31,528 in column B of the IL Sch CR as the amount that was double taxed. The equivalency formula incorrectly assumes 42.51% of all income include din their Federal AGI was taxed in Utah.

A formula referring to each states non-resident form would result in the proper amount being reported in column B of the IL 1040 Sch CR.

For example with Utah. One should take the amount from TC-40C line 31 reduce it by any amounts entered on lines 4, 9, 10 & 14 of the TC-40C. This resulting amount should then be entered in column B for the appropriate state. This formula would have resulted in 31,528 being reported in column B. I feel this is the correct amount and that Mrs. Z's return was correct as filed.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) provides for a foreign tax credit as follows:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year.

86 Ill. Admin. Code Section 100.2197(b)(4) provides that, in computing double-taxed income for purposes of the determining the limitation on the foreign tax credit, only items of income taxed by both states shall be included and only deductions allowed by both states shall be subtracted. Section 100.1297(b)(4)(H) provides:

Some states compute the tax liability of a nonresident by first computing the tax on all income of the nonresident from whatever source derived, and then multiplying the resulting amount by a percentage equal to in-state sources of income divided by total sources of income or by allowing a credit based on the percentage of total income from sources outside the state. Other states determine the tax base of a nonresident by computing the tax base as if the person were a resident and multiplying the result by the percentage equal to in-state sources of income divided by total sources of income. The use of either of these methods of computing tax does not mean that income from all sources is included in double-taxed income. See *Comptroller of the Treasury v. Hickey*, 114 Md. App. 388, 689 A.2d 1316 (1997); *Chin v. Director, Division of Taxation*, 14 N.J. Tax 304 (T.C. N.J. 1994). When a state uses either of these methods of computation, double-taxed income shall be the base income of the taxpayer from all sources subject to tax in that state, as computed in accordance with the rest of this subsection (b)(4), multiplied by the percentage of income from sources in that state, as computed under that state's law; provided, however, that no compensation paid in Illinois under IITA Section 304(a)(2)(B) shall be treated as income from sources in that state in computing such percentage.

Mrs. Z's foreign tax credit was properly computed by the Department in compliance with this regulation. No adjustment is appropriate.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax

¹ Your letter indicates that wages of \$31,528 were earned in Utah.

² Your letter indicates that \$557 was sourced to Utah.

³ Your letter erroneously indicates that Illinois taxes Social Security payments.